

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: NEW ENGLAND COMPOUNDING
PHARMACY, INC. PRODUCTS LIABILITY
LITIGATION

This Document Relates to:
All Cases

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) MDL No. 1:13-md-2419-RWZ
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**CHAPTER 11 TRUSTEE’S OPPOSITION TO MOTION OF DEFENDANT
LIBERTY INDUSTRIES, INC. FOR A LOCAL RULE 16.1 CONFERENCE**

Paul D. Moore, the chapter 11 trustee (the “Trustee”) of New England Compounding Pharmacy, Inc. d/b/a New England Compounding Center, hereby opposes the Motion of Defendant Liberty Industries, Inc. (“Liberty”) for a Local Rule 16.1 Conference [Doc. No. 1226] (the “Liberty Motion”) as it is premature in light of discovery stay imposed by this Court’s prior case management order. In opposition to the Liberty Motion, the Trustee states as follows:

The primary purpose of a Rule 16.1 scheduling conference is to set a schedule that will govern the pretrial phase of the litigation, including a schedule for all discovery events. Accordingly, the parties are required to confer and to prepare and file a written discovery plan in advance of the scheduling conference. *See* Local Rule 16.1(d).

The Liberty Motion is premature while discovery in this litigation is stayed. This Court previously instituted a stay of all formal discovery of NECC and the so-called “Affiliated Defendants.” *See* MDL Order No. 6 [Doc. No. 209]. While Liberty has sought to lift the discovery stay [Doc. No. 1229] (the “Liberty Lift Stay Motion”), the stay currently remains in effect.

For the reasons stated on the record at the June 19th status conference and in his forthcoming opposition to the Liberty Lift Stay Motion, the Trustee believes that the discovery

stay should remain in place at least until the settlement motions currently pending before the Bankruptcy Court have been adjudicated. *See, e.g.*, Hearing Transcript at 17-19, June 19, 2014, *In re New England Compounding Pharmacy Cases Litigation* (MDL No. 13-02419). Specifically, the settlement agreements themselves provide that, within ten business days of entry of an order by the Bankruptcy Court approving the settlements, the Trustee shall file a motion with this Court seeking an order staying litigation against the settling parties but permitting discovery of the settling parties in connection with the prosecution or defense of claims against third parties. *See, e.g.*, Chapter 11 Trustee's Motion to Compromise Controversies and to Approve Plan Support and Funding Agreement, and Related Escrow Agreement, with Certain Insiders and Affiliates of Debtor, and for Certain Related Relief [Bankr. Doc. No. 712], at 12-13. Thus, the Trustee has already contemplated that the lifting of the discovery stay will be revisited following approval of the settlements and believes that his motion provides the most appropriate context and timing to address the status and scope of discovery with respect to all parties in a Case Management Order.

CONCLUSION

For the foregoing reasons, the Trustee respectfully requests that this Court deny the Liberty Motion without prejudice to its renewal upon entry of a subsequent order of this Court modifying or lifting the discovery stay.

Dated: July 8, 2014

Respectfully submitted,

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Certificate of Service

I, Michael R. Gottfried, hereby certify that on July 8, 2014, I caused a copy of the foregoing document, which was filed using this Court's ECF system, to be served electronically upon those parties registered to receive ECF service. This document was also served by first class mail upon:

Darrel Cummings, DC# 088532
South Bay Correctional Facility
P.O. Box 7171
South Bay, FL 33493

/s/ Michael R. Gottfried
Michael R. Gottfried